IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 374 of 2007
TO
LETTERS PATENT APPEAL No. 495 of 2007
In
SPECIAL CIVIL APPLICATION No. 21935
TO
SPECIAL CIVIL APPLICATION No. 22056 of 2006
WITH
CIVIL APPLICATION Nos. 4698 to 4819 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 3 - Appellants
Versus
PWD EMPLOYEES UNION & 121 - Respondents

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Appearance :
MR SUNIT SHAH, GOVERNMENT PLEADER with MR APURVA DAVE, AGP for Appellants.
MR SHALIN N MEHTA for Respondents.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/05/2007
COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. This group of 122 Letters Patent Appeals are filed by the State of Gujarat and others against the judgment and order passed by the Learned Single Judge of this Court dated 13.10.2006 in Special Civil Applications No. 21935 of 2006 to 22056 of 2006 whereby the Learned Single Judge has directed the present appellants / original respondents to comply with the observations made by this Court in paragraph 9 of the judgment and order dated 14.06.2006 passed in Special Civil Application No. 5529 of 2003, in response to the details submitted by the present

respondents – original petitioners on 30.06.2006 in respect to each petitioner and to grant similar benefits to them after examining their factual details as per the records of the present appellants and if details submitted by the original petitioners are found to be correct according to the records of the present appellants, then same benefits should have to be extended in their favour on the same line as granted by this Court in Special Civil Application No. 5529 of 2003, vide its order dated 14.06.2006 with additional benefit of notional period difference of wages within a period of two months from the date of receipt of the copy of the said order.

2. This Court has issued notice for final disposal on 17.04.2007. Mr. Sunit Shah, learned Government Pleader with Mr. Apurva Dave, learned Assistant Government Pleader appeared for the appellants and Mr. Shalin Mehta, learned advocate appeared for respondents in all these appeals.

3. Before the Court proceeds to hear Mr. Shah on

merits, Mr. Shalin Mehta, learned advocate appearing for the respondents has raised certain preliminary objections against the maintainability of the appeals. He has submitted that the appellants have pointed out certain new facts in the memo of appeal which have not been stated on oath as these factual averments and allegations made by the appellants in the present appeals are not sworn by a proper affidavit accompanying the appeal. The same are required to be ignored. One principal allegation levelled by the appellants is that the Learned Single Judge has without calling upon them to show their stand, passed the impugned order in violation of the principles of natural justice. He has further submitted that this contention is in the nature of a factual averment or allegation which requires the support of a properly sworn affidavit of a competent Officer of the State Government who has personal knowledge of the said fact or who has obtained information of the said fact. This has not been done by the appellants in the present case and hence, the allegations levelled by the appellants against the

Learned Single Judge are required to be quashed and set aside. Such allegations or averments made by the appellants are ex-facie inconsistent with the record of the appearances shown on the first page of the impugned order dated 13.10.2006. The record of appearances shows that learned Government Pleader with learned Assistant Government Pleader had appeared in the bunch of Special Civil Applications for respondent Nos. 1 to 4 who are appellant Nos. 1 to 4 respectively in the present appeals on the relevant day. Such averments and allegations are ex-facie incompatible with paragraph 1 of the impugned judgment and order which categorically records the following :-

"Heard the learned advocate Mr. Shalin Mehta appearing on behalf of the petitioners and learned Government Pleader Mr. Sunit Shah with learned A.G.P. Mr. Dabhi appearing on behalf of the respondents."

4. He has further submitted that the appellants could have approached the Learned Single Judge for a clarification on the said issue, which they have not

done. The appellants have abused the process of law by making wild and patently false allegations against the Learned Single Judge. On the relevant day, when the bunch of Special Civil Applications were taken up for hearing, a fair audience had been accorded by the Learned Single Judge to the appellants' pleaders. At that time, the appellants had not raised any defence to the claim made in the petitions. The appellants had not even asked for time to file a counter affidavit. They had fairly admitted before the Learned Single Judge that respondent Nos. 2 to 122 in the present appeals were entitled to all benefits that were paid or were payable to 288 petitioners of Special Civil Application Nos. 422 & 423 of 1983. He has, therefore, submitted that the appellants are now estopped from raising a contention that they were accorded no opportunity by the Learned Single Judge to show-cause against the claim made by the respondents in the petitions. He has, therefore, submitted that since the appellants have falsely contended that they had not been allowed by the

Learned Single Judge to show-cause before the impugned order was passed, the present appeals are required to be rejected in limine with heavy costs.

5. In support of his submission regarding preliminary objection, Mr. Shalin Mehta has relied on the decision of the Hon'ble Supreme Court in the case of **Bhavnagar University V/s. Palitana Sugar Mill (P) Limited and others, (2003) 2 S.C.C. 111** wherein the observations made by the Hon'ble Supreme Court in its earlier decision in the case of *State of Maharashtra V/s. Ramdas Shrinivas Nayak, (1982) 2 SCC 463* were reiterated and a passage is quoted there from which states that the principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is

still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party must resile and an appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

6. Mr. Mehta further relied on the judgments of the Hon'ble Supreme Court reiterating the same principles. They are as under :-

A) *Roop Kumar V/s. Mohan Thedani, (2003) 6 S.C.C. 595;*

B) *Central Bank of India V/s. Vrajlal Kapurchand Gandhi and Another, (2003) 6 S.C.C. 573;*

C) *Guruvayoor Devaswom Managing Committee and Another V/s. C. K. Rajan and others, (2003) 7 S.C.C. 546;*

D) *Shankar K. Mandal and others V/s. State of Bihar and others, (2003) 9 S.C.C. 519*

E) *Ram Bali V/s. State of U.P., (2004) 10 S.C.C. 598*

F) *Commissioner of Customs, Mumbai V/s. Bureau Veritas and others, (2005) 3 S.C.C. 265*

7. Mr. Mehta has made it very clear that if on this preliminary issue the Court is not with him, he would not invite any order on merits and the matter may be remanded back to the Learned Single Judge to decide it on merits afresh. He, however, submitted that the appellants have raised several contentions on merits in the appeal memo and based on this,

submissions were made by learned Government Pleader, Mr. Shah. He refers to the affidavit-in-reply filed in the present proceeding which deals with all the contentions raised by the appellants.

8. Before dealing with the preliminary contentions, it is necessary to have a close look at the factual matrix, the nature of controversy between the parties and pleadings as well as submissions made by their Counsels in this regard.

9. The respondent in Letters Patent Appeal No. 374 of 2007 is a Union known as PWD Employees Union duly registered Trade Union bearing No. G-2382. All other respondents in rest of the appeals are daily wagers of the Roads and Buildings Circle, Surat ('R & B' for short). Initially, Special Civil Application No. 5529 of 2003 had been filed by the Union in a representative capacity for and on behalf of 409 daily wagers of the R & B Circle, Surat which included the present respondents, for the following reliefs :-

A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents herein to implement fully the final judgment and order dated 30.01.1996 rendered in Special Civil Applications No. 422 & 423 of 1983 within a time period of two months from the date of filing of the present petition;

B) Your Lordship may be pleased to declare the action of the official respondents herein of not implementing and complying with the directions contained in the final judgment and order dated 30.01.1996 passed by this Hon'ble High Court in Special Civil Applications No. 422 & 423 of 1983, as illegal, unconstitutional, bad and violative of Articles 14, 16 & 21 of the Constitution of India;

C) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the official respondents herein to forthwith issue orders of "work-charged" to all 409 daily wagers of Roads & Buildings Circle, Surat whose names are mentioned in the list of Annexure-J, and further directing payment of arrears to all the 409 daily wagers of Roads & Buildings Circle, Surat as per the calculation of arrears made out in the list annexed at Annexure-J;

D) Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondents herein to complete the process of issuing orders of "work-charged" to all the 409 daily wagers of Roads and Buildings Circle, Surat, whose names are mentioned in the list of Annexure-J, and to further verify the calculation of arrears payable to the present group of 409 daily wagers, made by the petitioner Union as shown in the list annexed at Annexure-J;

E) Your Lordships may be pleased to pass any other appropriate order as deemed fit in the interest of justice; and

F) *Your Lordships may be pleased to award costs quantified at Rs.20,000/- to the petitioners*."

10. Really speaking, Special Civil Application No. 5529 of 2003 was filed for compliance of the final judgment and order dated 30.01.1996 passed by this Court in Special Civil Application Nos. 422 & 423 of 1983. Out of the group of 409 daily wagers on whose behalf the Union had filed Special Civil Application No. 5529 of 2003, 288 daily wagers were party in Special Civil Application Nos. 422 & 423 of 1983. The remaining 121 daily wagers who are now respondents in the present group of Letters Patent Appeals had not become members of the Union at the time when Special Civil Application Nos. 422 & 423 of 1983 had been filed in this Court. They became members of the Union subsequently.

11. The said Special Civil Application No. 5529 of 2003 was admitted by this Court on 17.08.2005 and ultimately on 14.06.2006, it was finally heard and oral judgment was pronounced by this Court

whereby directions were issued to the present appellants to make payment to the group of 288 employees as follows :-

Under the Head of	Amounts (Rs.)
L.T.C.	4,58,160
Group Insurance	7,07,625
Leave Encashment (To Retired / Expired employees)	12,27,002
Surrender Leave	2,96,332
Transport Allowance	12,44,850
Public Holidays	41,31,730
Total	80,65,699

12. This Court has further directed that the aforesaid amounts shall be paid with interest @ 9% p.a. for the period from 01.09.2000 to the date of payment or upto 01.09.2006, whichever may be earlier. It was further directed that the principal amount so quantified shall thereafter carry penal interest @ 12% p.a. if the payment is delayed beyond 01.09.2006.

13. In so far as the present respondents – daily wagers are concerned who were not party to the original proceedings i.e. Special Civil Applications No. 422 & 423 of 1983 but were similarly situated and employed in the same department during the same period on the same terms and conditions as the erstwhile 288 daily wagers, this Court directed that the present appellants would look into the claims of such daily wagers for payment at par with the 288 daily wagers and members of the Union who were party to the original proceedings i.e. Special Civil Application Nos. 422 & 423 of 1983. It was also observed by the Court that the case of the present respondents and members of the Union would not be rejected by the present appellants only on the ground that they were not parties to the original proceedings i.e. Special Civil Application Nos. 422 & 423 of 1983.

14. Pursuant to the said judgment and order dated 14.06.2006 passed by this Court in Special Civil

Application No. 5529 of 2003, the Union sent a list of the names and particulars of 121 daily wagers and members of the Union who are covered under paragraph 9 of the judgment and order dated 14.06.2006. Since nothing was done by the present appellants in response to the Union's letter dated 30.06.2006, the Union has filed Misc. Civil Application (Stamp No.) No. 2371 of 2006 in Special Civil Application No. 5529 of 2003 for restoration so as to prosecute the same on merits. The same was disposed of as withdrawn on 06.10.2006. Since the Court was of the view that review is not the proper remedy for the aggrieved parties and they have to file substantive petition on the basis of the observations made in the earlier judgment and order passed in Special Civil Application No. 5529 of 2003, the present respondents have filed Special Civil Application Nos.21935 to 22056 of 2006 which came to be disposed of by the Learned Single Judge of this Court on 13.10.2006.

15.It is this order which is under challenge in the

present group of Letters Patent Appeals.

16. Mr. Sunit Shah, learned Government Pleader has submitted that the impugned judgment and order passed by the Learned Single Judge is bad in law, unwarranted of facts, contrary to the correct legal position and in violation of the principles of natural justice. He has submitted that the Learned Single Judge has, without calling upon the original respondents to show their stand, has passed an order in violation of principles of natural justice. The Learned Single Judge, upon hearing the representation made by the respondents that they are similarly situated with the petitioners of Special Civil Application No. 5529 of 2003 wherein the judgment dated 14.06.2006 is passed by this Court directed the present appellants to examine the details furnished by them and to extend the benefits in their favour on the same line as granted by this Court in Special Civil Application No. 5529 of 2003. Mr. Shah has further submitted that at the time when the said matter was heard and disposed of,

learned Government Pleader with Assistant Government Pleader obviously were not aware of the Government decision as to whether Letters Patent Appeal is preferred against the judgment and order passed in Special Civil Application No. 5529 of 2003 and hence, they could not point out the decision of the Government to the Learned Single Judge of this Court. If the decision to prefer Letters Patent Appeal against the said judgment was pointed out, the Learned Single Judge might not have issued such directions. The Government has already preferred Letters Patent Appeal No. 1625 of 2006 against the judgment and order dated 14.06.2006 passed in Special Civil Application No. 5529 of 2003 which is being heard by this Court along with the present group of appeals.

17. Mr. Shah has further submitted that the State Government was deprived of an opportunity to place necessary material on record. For want of an adequate opportunity, the State Government could not point out that present respondents are not

similarly situated in law and not at par with the petitioners of Special Civil Application No. 5529 of 2003. The State Government could not have pointed out that the judgment of Special Civil Application No. 5529 of 2003 dated 14.06.2006 was passed on the basis of judgment in Special Civil Application No. 3607 of 1982 and Special Civil Application Nos. 422 & 423 of 1983 which in turn was based on the Government Resolution dated 17.10.1988. The said GR extends certain benefits to the daily wagers and from the said G.R., it could not have been concluded that they were to be made work charged employees. Mr. Shah has further submitted that in absence of proper and adequate opportunity, the State Government could not have pointed out that if the benefits given in Special Civil Application Nos. 3607 of 1982 & 422 & 423 of 1983 are extended to all daily wagers of the State Government, it could have far-reaching financial implications and administrative consequences, as there are about 14,000 daily wagers in the R & B and other departments like Irrigation, Forest etc. In absence of

proper opportunity, the State Government could not have pointed out that Special Civil Application No. 3607 of 1982 pertains to daily wagers of irrigation department, whereas Special Civil Application Nos. 422 & 423 of 1983 pertains to R & B. Therefore, these daily wagers of both the departments cannot be treated at par. The benefits like Leave Travel Concession, Leave Encashment, Public Holidays, Travel Allowance, Group Insurance, Medical Allowances and Provident Fund are required to be given to the employees in accordance with the rules and regulations as decided vide judgment in Special Civil Application No. 3607 of 1982 meaning thereby, it has to be first decided whether regular employees of Government are entitled for the benefits in cash and what is the extent of such benefits according to Rules and Resolution in this regard. He has further submitted that in absence of proper opportunity, the State Government could not have pointed out that the present respondents were not entitled to such payments as were directed by the Learned Single Judge. The present respondents have never

approached to this Court until year 2003. Earlier, petitions being Special Civil Application Nos. 422 & 423 of 1983 were filed in the year 1983 and, therefore, the present respondents could not have been treated at par with the daily wagers of earlier two petitions. Their claim was never adjudicated about the admissibility or parity with the daily wagers covered under Special Civil Application Nos. 422 & 423 of 1983.

18. With regard to benefit of the leave travel concession, Mr. Shah has submitted that the conversion of the said benefit into money was permissible only for a period between 1992 to 1995. Even certain class of daily wagers of R & B Department were made first time work charged employees on or about 22.04.2003 on the basis of judgment in Special Civil Application No. 3607 of 1982 on 30.01.1996 with effect from 01.01.1995, meaning thereby they would not be even otherwise entitled for benefits of Leave Travel Concession because they have not performed work as work

charged employees for three years as on 01.01.1995. Relevant rules of work charged employees are framed by the Government on 12.12.1989. Paragraph 92.13 clearly provides that Leave Encashment and Leave Travel Concession is permissible to the employee only if he has continuously served as work-charged employee for three years. With regard to the respondents' claim regarding public holidays in cash, he has submitted that even the regular employees of the Government are not entitled to encashment of leave on account of discharging duties on public holidays. Regular employees are given compensatory leave for discharging their duties on public holidays and, therefore, encashment of said benefit is not permissible under the G.R. With regard to travel allowance, he has submitted that it is admissible only in cases where Government employees or workman are not provided transport facility for going to work. This claim cannot be adjudicated unless evidence to that effect is led before the Court about the actual traveling expenses incurred by the employees out of

his pocket or government has not provided transport facility at any point of time. It would be a question of disputed facts and could not have been granted in omnibus fashion. He has further submitted that Rojamdars who are required to be taken to outside the beat, they are shifted through trucks of R & B and, therefore also, question of traveling allowance does not arise. The transport allowance was never a part of the judgment rendered in Special Civil Application No. 3607 of 1982. The Group Insurance is not required to be paid because all employees in Special Civil Application Nos. 422 & 423 of 1983 have never contributed towards their premium. However, from 1998 onwards, the said amount is being deducted from the wages of concerned work-charged employees and, therefore, all those who are contributors of the said group insurance scheme, are only entitled for the said benefit and they will be accordingly given benefits as and when said eventuality occurs. There is no mention regarding surrender leave in the judgment rendered in Special Civil Application No.3607 of 1982. He has,

therefore, submitted that the claims made by the present respondents are not otherwise admissible at par with regular employees. In such a situation, awarding of interest, without adjudicating the admissibility of the amount under respective heads is not at all just and proper.

19. Mr. Shah in support of his submission has relied on the decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others V/s. Uma Devi (3) and others, (2006) 4 SCC 1** wherein the claim of parity in the matter of allowance is negatived by the Hon'ble Supreme Court. Individualization of justice is strongly deprecated on the ground that the same is de-horse the constitutional scheme. In paragraph 14 of the said judgment, the Hon'ble Supreme Court has clearly held that the concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on adhoc basis, temporary basis or based on no process

of selection as envisaged by the rules. The Court further observed that acceptance of principle of equal pay for equal work cannot lead to a position where the Court could direct that appointment made without following the due procedure established by law, be deemed permanent or issued directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order is necessary for doing complete justice in any cause or matter pending before the Court and it would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. The Court further observed that the Court should not grant a relief which would amount to perpetuating an illegality.

20. Mr. Shah has further submitted that even if the judgment of this Court dated 30.01.1996 passed in Special Civil Application No. 3607 of 1982 is seen in proper perspective, it can be stated by the State that no one under the G.R. dated 17.10.1988 was made a

work charged employees and hence, there was no question of giving them benefit of work-charged employees accordingly. Even if it is presumed for the sake of argument that the said judgment is applicable to the facts of the present case, it is stated in the said judgment that necessary steps may be taken to give benefits as may be permissible under the relevant rules and regulations. Even on this count, the benefits could have been given only if the person concerned was eligible and entitled to as per the Govt. norms and guidelines, Rules, Regulations, Resolutions and law. He has further submitted that as per G.R. dated 18.07.1994, it has been clarified that calling permanent and permanency of service by Rojamdar has been defined to be continuity of service and security / protection of job obtained. It was never intended to put them at par with the employees on regular sanctioned establishment. Even otherwise the employees on regular establishment are also not called permanent.

21. Mr. Shah has further submitted that the judgment given in Special Civil Application No. 422 & 423 of 1983 is in respect of daily wagers of the R & B and that judgment is based on Special Civil Application No. 3607 of 1982 which pertains to the daily wagers of irrigation department. The seniority list of daily wagers is maintained separately by each department and each list is operated for the promotion purposes for work charged posts strictly according to the requirement / situation prevalent in the concerned department. Such promotion process in one department is not influenced by the promotion process in another department, since requirement for the number of daily wagers to be made as work charged in both the departments can be totally different. The R & B Department is not bound to follow the requirement and promotion process undertaken by the Irrigation Department, as it is not based on the same process. Hence, the daily wagers in both the departments are not similarly situated and, therefore, cannot be treated at par.

22. Mr. Shah has further relied on the decision of the Hon'ble Supreme Court in the case of **Ekta Shakti Foundation V/s. Govt. of NCT of Delhi, AIR 2006 SUPREME COURT 2609** wherein the Hon'ble Supreme Court has observed that Art. 14 has no application or justification to legitimize an illegal and illegitimate action. The concept of equality as envisaged under Art. 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.

23. Mr. Shah has further relied on the decision of the Hon'ble Supreme Court in the case of **Municipal Corporation, Jabalpur V/s. Om Prakash Dubey, 2007 AIR SCW 589**, the Hon'ble Supreme Court

has held that where the appointments of daily wagers made by Municipal Corporation in violation of statutory rules and thus, they were illegal appointments and the Corporation took policy decision to regularise such services, which was reversed by the State, the order of High Court directing the Corporation to regularise the services was liable to be set aside particularly, when Corporation was obliged to follow the directions of State in view of S. 58.

24. Mr. Shah has further relied on the decision of the Hon'ble Supreme Court in the case of **State of Bihar and others V/s. Kameshwar Prasad Singh and another, AIR 2000 SUPREME COURT 2306**, wherein the Hon'ble Supreme Court has held that the concept of equality as envisaged under Art. 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of

individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly, wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.

25. Mr. Shah has further relied on the decision of Hon'ble Supreme Court in the case of **Kastha Niwarak G. S. S. Maryadit, Indore V/s. President, Indore Development Authority, AIR 2006 SUPREME COURT 1142**, the Hon'ble Supreme Court has held that what the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality.

26. Mr. Shah has further relied on the decision of Hon'ble Supreme Court in the case of **U.P. State Sugar Corpn. Ltd. And Anr. V/s. Sant Raj Singh & Ors., AIR 2006 SUPREME COURT 2296**, the Hon'ble Supreme Court has held that the doctrine of equal pay for equal work, as adumbrated under Art. 39 (d) of the Constitution of India read with Art. 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated to be a valid basis for classification of two categories of employees.

27. Based on the aforesaid grounds, Mr. Shah has strongly urged that the impugned judgment and order passed by the Learned Single Judge deserves to be quashed and set aside and all the appeals are required to be allowed.

28.As against the submissions of Mr. Shah, Mr. Mehta has submitted that Special Civil Applications No. 21935 to 22056 of 2006 had been filed by the respondents before the Letters Patent Appeal No. 1625 of 2006 was filed by the State Government against the judgment and order dated 14.06.2006 passed in Special Civil Application No.5529 of 2003. It is not as if no payment of any benefit is made by the appellants to the first group of 288 employees of the R & B in the proceeding of Special Civil Application No. 5529 of 2003. The appellants have deliberately suppressed the fact that even in the proceedings of Special Civil Application No. 5529 of 2003, payment of a sum exceeding Rs.40 Lacs is made by them to this first group of 288 employees under the head of “Notional Period”. This payment is not under challenge in Letters Patent Appeal No. 1625 of 2006. Even so far as other heads like Leave Travel Concession, Group Insurance, Surrender Leave and Leave Encashment to retired/expired employees are concerned, the appellants' challenge in Letters Patent Appeal No.1625 of 2006 does not

survive on account of orders passed by Division Bench in contempt proceedings. These orders are passed by the Division Bench in Misc. Civil Application No.2880 of 2006. This would clearly reveal that a substantial part of challenge to the judgment and order dated 14.06.2006 passed by the Learned Single Judge in Special Civil Application No.5529 of 2003 is given up by the appellants. Despite this, the appellants are trying to portray a picture that no payment is made by them to any employee in the proceeding of Special Civil Application No. 5529 of 2003.

29. Mr. Mehta has further submitted that the State Government was not deprived of any opportunity to place necessary material on record of the writ petitions when the same were pending before the Learned Single Judge. In fact, the appellants did not seek any opportunity to place any material on record before the Learned Single Judge. As recorded by the Learned Single Judge in the impugned order dated 13.10.2006, even after the respondents approached

the appellants with complete details about the payment due to such employees, nothing was paid by the appellants. Even after the first order dated 14.06.2006 passed by the Learned Single Judge in Special Civil Application No.5529 of 2003, the respondents were not told by the appellants that they were different from the first group of 288 employees of the R & B as a result of which they could not be given any benefit. The sole reason prevailing with the respondents to withhold the benefits from the respondents was that the respondents were not party to Special Civil Application Nos. 422 & 423 of 1983 whereas first group of 288 employees of the R & B were party thereto. Other than this, the appellants had not cited any reason either in the proceeding of Special Civil Application No.5529 of 2003 or in the proceeding of Special Civil Application Nos. 21935 to 20056 of 2006, to deny the benefits to the respondents under the various heads enumerated in paragraph 4 of the impugned judgment and order dated 13.10.2006.

30.Mr. Mehta has further submitted that the learned Government Pleader was heard in the matter and the claim of the respondents was fairly admitted by the appellants. Hence, though opportunity was available to the appellants to raise appropriate defence, the same was not availed of. In this fact situation, no fault can be found with the impugned judgment. On merits also, there is absolutely nothing to choose between the present respondents and the first group of 288 daily wagers of the R & B. The present respondents are also daily wagers serving in R & B. In Special Civil Applications No. 422 & 423 of 1983, the Learned Single Judge of this Court vide judgment and order dated 30.01.1996 directed payment of work charged benefits to the 288 daily wagers (first group of employees) on account of their long service on daily wages. When these two petitions were filed in the year 1983, the present respondents were also in service on daily wages in R & B. However, the present respondents had joined the Union only after the decision of the Learned Single Judge in Special

Civil Applications No. 422 & 423 of 1983. Therefore, they could not have become party to this proceeding filed in the year 1983. Except this factor, there is absolutely nothing to choose between the present respondents and the first group of 288 daily wagers of the R & B on whose behalf Special Civil Applications No. 422 & 423 of 1983 had been filed by the Union. The controversy resting in a very narrow compass. The G.R. dated 17.10.1988 passed by the R & B need not be referred to. In fact, the present respondents and the first group of 288 daily wagers of the R & B are both getting benefits under the said Resolution dated 17.10.1988. Thus the appellants did not have any rational or reasonable basis to discriminate between the present respondents and the first group of 288 daily wagers of the R & B.

31. Mr. Mehta has further submitted that the claim made by the present respondents in their petitions was clearly admitted by the appellants. G.R. dated 17.10.1988 issued by the R & B is made applicable to

the present respondents just as it was made applicable to the first group of 288 daily wagers of the R & B on whose behalf Special Civil Applications No. 422 & 423 of 1983 has been filed by the Union. This group of 288 employees was given benefits similar to the one given to the employees of Irrigation Department by the Learned Single Judge vide decision dated 30.01.1996 looking to the long service put in by them on daily wages. Even the present respondents have been engaged for a long time on daily wages. Thus, there is no real discrimination between the present respondents and the first group of 288 daily wagers. Therefore, the benefits paid and payable to the first group of 288 daily wagers are required to be awarded to the present respondents as well.

32. Mr. Mehta has further submitted that the appellants cannot be permitted to wriggle out of their constitutional obligations of treating equals equally by painting a parade of horribles before this Court. The present appellants are only concerned with the

bunch of 122 daily wagers of the R & B. So, the question of conferring benefits awarded to the present respondents by the impugned order to some 14,000 daily wagers of other departments who are not before this Court, cannot arise in the present case. For this reason, the appellants cannot be allowed to rely upon further apprehension of meeting the demands of some 14,000 daily wagers of other departments to deny the present respondents what is otherwise lawfully due to them. Even otherwise, this contention of financial hardship was never pressed into service by the appellants before the Learned Single Judge and hence, new material sought to be placed on record of the present appeal cannot be countenanced.

33. Mr. Mehta has further submitted that the appellants are estopped from raising the contention that the daily wagers of the erstwhile Irrigation department cannot be compared with the daily wagers of the R & B. Vide decision dated 30.01.1996 in Special Civil Application No. 3607 of 1982, the Learned Single

Judge of this Court directed payment of certain work charged benefits to 746 daily wagers of the erstwhile Irrigation department. Vide decision dated 30.01.1996 in Special Civil Applications No. 422 & 423 of 1983, the same Learned Single Judge directed that the benefits payable to the employees in Special Civil Application No. 3607 of 1982 were to be given to the concerned daily wagers of the R & B. The said decision dated 30.01.1996 passed by this Court in Special Civil Application No.3607 of 1982 has become final on its affirmation by the Hon'ble Supreme Court vide order dated 09.08.2000. In this view of the matter, it is no longer open for the appellants to contend that the daily wagers of the erstwhile Irrigation department cannot be compared with the daily wagers of the R & B.

34. Mr. Mehta has further submitted that dispute in respect of 4 heads, viz. LTC, Group Insurance, Leave Surrender and Leave Encashment to retired/expired employees was given up by the appellants before the Learned Single Judge. In fact, it was not even

argued before the Learned Single Judge in the proceeding of Special Civil Application No. 5529 of 2003 that the payment of sums under other heads to the first group of 288 work charged employees of the R & B would be dehorse the prevailing rules and regulations. Even in the proceeding of Misc. Civil Application No. 2880 of 2006 by the respondents, it was candidly submitted by the learned Government Pleader on instructions from the appellants that the amount of Rs.25 Lacs approximately was the undisputed amount that was due and payable to the first group of 288 work charged employees of the R & B. The amounts payable under the above referred four heads was never in dispute. In so far as the disputed heads are concerned, only two remain, namely, Public Holidays and Transport/Travel Allowance. Both these items are dealt with by the Learned Single Judge in the impugned judgment and order dated 14.06.2006 after addressing the relevant rules and regulations on their grantability. Under these circumstances, it is hardly fair on the part of the appellants to contend that the Learned Single

Judge has ignored the relevant rules and regulations while awarding the benefits of public holidays and transport / travel allowance. He has, therefore, submitted that if the same rules and regulations apply to both these departments, per force the benefits awarded to the work-charged employees of the erstwhile Irrigation department would have to be advanced to the work-charged employees of the R & B which would be in accordance with the judgment dated 30.01.1996 passed by this Court in Special Civil Applications Nos. 422 & 423 of 1983.

35. Mr. Mehta has further submitted that the benefit of LTC has been directed to be paid by the Learned Single Judge to the first group of 288 daily wagers of the R & B vide judgment and order dated 14.06.2006. As the present respondents are not different from these 288 daily wagers of the R & B, they are also required to be paid the said benefit. No argument on merit was raised by the appellants before the Learned Single Judge and hence, the appellants are estopped from contending that the

benefit of LTC is not admissible to the present respondents. With regard to benefit of public holidays payable to the present respondents, Mr. Mehta has said that the said benefit has been directed to be paid by the Learned Single Judge to the first group of 288 daily wagers of the R & B vide judgment and order dated 14.06.2006. Since the present respondents are not different from these 288 daily wagers of the R & B, they are also required to be paid the said benefit. No argument on merit was raised by the appellants before the Learned Single Judge and hence, the appellants are estopped from contending that the benefit of public holidays is not admissible to the present respondents. With regard to benefit of travel / transport allowance payable and admissible to the present respondents, Mr. Mehta has submitted that the same benefit has been directed to be paid by the Learned Single Judge to the first group of 288 daily wagers of the R & B vide judgment and order dated 14.06.2006 and there is no reason to deny the said benefit to the present respondents since everything being equal amongst

them. Same thing is applicable in respect of Group Insurance and surrender leave. On the same parity of reasoning, the present respondents are entitled to the benefit of Group Insurance and surrender leave.

36. Mr. Mehta has further submitted that the judgments of the Hon'ble Supreme Court cited before the Court do not have any application to the facts of the present case. It has never been the contention of the appellants that the present respondents are illegally appointed. In fact, the present respondents are already clothed with a quasi permanent status under the G.R. dated 17.10.1988 issued by the R & B. Further in Uma Devi's case, the Hon'ble Supreme Court has clarified that matters on the issue of permanency and regularization that have become final before the decision, need not be reopened. In this view of the matter, the decision of Uma Devi is of no help to the appellants.

37. In the above view of the matter, Mr. Mehta has strongly urged that even on merits, the order of the

Learned Single Judge does not call for any interference by this Court while exercising its power under Clause 15 of the Letters Patent and hence, all the appeals deserve to be dismissed with costs.

38. After having heard Mr. Sunit Shah, learned Government Pleader with Mr. Apurva Dave, learned Assistant Government Pleader appearing for the appellant and Mr. Shalin Mehta, learned advocate appearing for the respondents and after having gone through the impugned judgment and order of the Learned Single Judge and after having considered the averments made in the memo of Special Civil Applications as well as the present Letters Patent Appeals and the documents forming part of the record, we are of the view that the preliminary objection raised by Mr. Mehta against maintainability of all these appeals deserve to be overruled and it is accordingly overruled.

39. There is no dispute about the fact that on the very first hearing, all the Special Civil Applications were

decided by the Learned Single Judge. There is also no dispute about the fact that on advance copy being served to the office of the Government Pleader, the learned Government Pleader appeared before the Learned Single Judge and made submissions on behalf of the State Government. It is the normal practice that while hearing the other side on advance copy, the reliefs claimed in the petition are not granted by finally disposing of the petition in favour of the petitioner. If the Court is of the view that the petition deserves consideration by the Court and some relief either interim or ad-interim is required to be granted in the matter, the Court either issues notice or rule in the matter and appropriate interim order is passed granting relief to the facts and circumstances of the case. However, the matters are not normally disposed off finally.

40. The advocate or the Government Pleader who appears on behalf of the respondents in the matter may not be fully prepared as there was hardly any time to get adequate information or instruction in

the matter. He may make certain submissions objecting to the admission of the petition or granting of any ad-interim or interim relief therein. However, his submissions are not as adequate or as complete so as to enable the Court to finally dispose of the matter, that too, against the present appellant in a given case. It is also a well established precedent that in absence of any request made by the parties to dispose of the matter at the admission stage or even on the basis of the advance copy being served on the other side, no relief prayed for in the petition by the petitioner and against the respondent should be granted finally. Here in the present case, it is nowhere mentioned as to whether the learned Government Pleader has given his consent for final disposal of the petitions. It is also equally true that it is nowhere mentioned as to whether the learned Government Pleader has prayed for time to get necessary information. Be that as it may, since the Learned Single Judge has finally disposed of all the petitions at the admission stage and that too on the advance copy being given to the learned Government

Pleader, it is not in accordance with the principles of natural justice.

41. It is open for the aggrieved party to go before the same Judge who has passed the order and that is the ratio laid down by all the judgments cited by Mr. Mehta before this Court. However, the present case stands altogether on a different footing. Here in the present group of petitions, there are only pleadings contained in the memo of petitions and oral submissions were made before the Court. Neither there is any affidavit-in-reply nor affidavit-in-rejoinder and no documents are produced on behalf of the other side. In absence of this, it is difficult to arrive at the conclusion that appropriate and adequate opportunity is given to the present appellants to put up their case before the Learned Single Judge. In such a situation, if the grievance is raised by the appellants before this Court by way of filing these appeals, the Court does not think it just and proper to ask them to go before the Learned Single Judge directing them to file review of an order

nor it is proper to dismiss all these appeals at the very threshold. Instead of doing this, the Court is of the view that interest of justice would better be served to quash and set aside the impugned order passed by the Learned Single Judge and to remand all these matters for their consideration afresh, by the Learned Single Judge after giving adequate opportunities to the parties. We, therefore, quash and set aside the impugned order dated 13.10.2006 passed by the Learned Single Judge in Special Civil Applications No. 21935 of 2006 to 22056 of 2006 and remand all these Special Civil Applications to the Learned Single Judge for deciding afresh on merits after giving adequate opportunities to the parties.

42. Even in the case of ***State of Maharashtra V/s. Ramdas Shrinivas Nayak, (1982) 2 SCC 463***, the Hon'ble Supreme Court has observed that of course a party must resile and an appellate Court may permit him in rare and appropriate cases to resile

from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice. Here in the present case, despite the fact that no submission was made to the effect that the petitions may finally be heard and disposed off, all these matters were finally decided by the Learned Single Judge. We are therefore of the view that these are the rare and appropriate cases where the appeals are required to be entertained and it will secure the ends of justice. Hence, all the Special Civil Applications are required to be remanded so that the same can be decided on merits after hearing the parties to the proceedings to their satisfaction.

43. There is also a very strong reason for remanding all these matters to the Learned Single Judge as in this group of petitions, parity is sought for with the employees and benefits given to them in Special Civil Application No. 5529 of 2003 against which an appeal is preferred being Letters Patent Appeal No.1625 of 2006. The said appeal is also heard by

this Court simultaneously and by its judgment of even date, this Court has quashed and set aside the order and judgment passed by the Learned Single Judge on 14.06.2006 in Special Civil Application No. 5529 of 2003 and remanded the matter to the Learned Single Judge for deciding it afresh in view of the directions and observations made therein. For the sake of brevity, we do not think it just and proper to repeat or reproduce all these directions here in this judgment. However, while deciding this group of petitions afresh, the Learned Single Judge is requested to consider the directions given and observations made in our judgment and order of even date in Letters Patent Appeal No. 1625 of 2006 and also to consider the respective contentions of the parties extracted in the preceding paragraphs and other submissions that may be made before him.

44. Subject to the above, the impugned judgment and order dated 13.10.2006 passed in Special Civil Applications No. 21935 of 2006 to 22056 of 2006 is hereby quashed and set aside and all these Special

Civil Applications are remanded to the Learned Single Judge for deciding the same afresh on merits. All these appeals are accordingly allowed to the aforesaid extent without any order as to costs.

45. In view of the disposal of all these appeals, Civil Applications do not survive and they are accordingly disposed of.

Sd/-
[A. M. KAPADIA, J.]

Sd/-
[K. A. PUJ, J.]

Savariya